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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 VERNON WAYNE McNEAL,

12 Plaintiff,

13 v.

14 EVERT, et al.,

15 Defendants.
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No. 2:05-cv-0441-GEB-EFB P

ORDER


17 Plaintiff is a state prisoner proceeding without counsel in an action brought under 42
18 U.S.C. § 1983. He requests that the court appoint counsel. District courts lack authority to
19 require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States*
20 *Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an
21 attorney to voluntarily to represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v.*
22 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th
23 Cir. 1990). When determining whether “exceptional circumstances” exist, the court must
24 consider the likelihood of success on the merits as well as the ability of the plaintiff to articulate
25 his claims pro se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560
26 F.3d 965, 970 (9th Cir. 2009). Having considered those factors, the court finds there are no
27 exceptional circumstances in this case.

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1 Plaintiff indicates in his motion that he desires counsel so that the attorney could gather
2 evidence to be used at trial. ECF No. 315. The time for plaintiff to marshal evidence in support
3 of his claims – i.e., the discovery period – has passed. ECF No. 101.

4 Accordingly, IT IS HEREBY ORDERED that plaintiff's November 28, 2017 motion for
5 appointment of counsel (ECF No. 315) is denied.

6 DATED: December 11, 2017.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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